

# HOUSE BILL No. 1219

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5-4-1.

**Synopsis:** Sales tax collection by small vendors. Provides that a person who sells tangible property as part of a hobby is not selling at retail and is not liable for collecting the state gross retail tax on sales.

**Effective:** July 1, 2002.

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**Reske, Grubb, Brown T, Cherry**

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January 10, 2002, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## HOUSE BILL No. 1219

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) A person is a  
3       retail merchant making a retail transaction when he engages in selling  
4       at retail.

5       (b) A person is engaged in selling at retail when, in the ordinary  
6       course of his regularly conducted trade or business, ~~he~~ **the person:**

7           (1) acquires tangible personal property for the purpose of resale;

8           and

9           (2) transfers that property to another person for consideration.

10       (c) **A regularly conducted trade or business does not include a**  
11       **hobby or leisure activity:**

12           **(1) in which a person engages infrequently; and**

13           **(2) that produces income that the department considers de**  
14           **minimis.**

15       (d) For purposes of determining what constitutes selling at retail, it  
16       does not matter whether:

17           (1) the property is transferred in the same form as when it was

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1 acquired;

2 (2) the property is transferred alone or in conjunction with other  
3 property or services; or

4 (3) the property is transferred conditionally or otherwise.

5 ~~(d)~~ **(e)** Notwithstanding subsection (b), a person is not selling at  
6 retail if ~~he~~ **the person** is making a wholesale sale as described in  
7 section 2 of this chapter.

8 ~~(e)~~ **(f)** The gross retail income received from selling at retail is only  
9 taxable under this article to the extent that the income represents:

10 (1) the price of the property transferred, without the rendition of  
11 any service; and

12 (2) except as provided in subsection ~~(g)~~, **(h)**, any bona fide  
13 charges which are made for preparation, fabrication, alteration,  
14 modification, finishing, completion, delivery, or other service  
15 performed in respect to the property transferred before its transfer  
16 and which are separately stated on the transferor's records.

17 ~~(f)~~ **(g)** Notwithstanding subsection ~~(e)~~: **(f)**:

18 (1) in the case of retail sales of gasoline (as defined in  
19 IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the  
20 gross retail income received from selling at retail is the total sales  
21 price of the gasoline or special fuel minus the part of that price  
22 attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or  
23 Section 4041(a) or Section 4081 of the Internal Revenue Code;  
24 and

25 (2) in the case of retail sales of cigarettes (as defined in  
26 IC 6-7-1-2), the gross retail income received from selling at retail  
27 is the total sales price of the cigarettes including the tax imposed  
28 under IC 6-7-1.

29 ~~(g)~~ **(h)** Gross retail income does not include income that represents  
30 charges for serving or delivering food or beverages furnished, prepared,  
31 or served for consumption at a location, or on equipment, provided by  
32 the retail merchant. However, the exclusion under this subsection only  
33 applies if the charges for the serving or delivery are stated separately  
34 from the price of the food or beverages when the purchaser pays the  
35 charges.

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